

2550
No. 12038

United States
Court of Appeals
for the Ninth Circuit

JOHN E. HUMES,

Appellant,

vs.

ALASKA TRANSPORTATION COMPANY,
a corporation,

Appellee.

Apostles on Appeal

Upon Appeal from the District Court of the United States
for the Western District of Washington,
Northern Division

OCT 16 1948

PAUL P. O'BRIEN, \

No. 12038

United States
Court of Appeals

for the Ninth Circuit

JOHN E. HUMES,

Appellant,

vs.

ALASKA TRANSPORTATION COMPANY,
a corporation,

Appellee.

Apostles on Appeal

Upon Appeal from the District Court of the United States
for the Western District of Washington,
Northern Division

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Account of Wages U. S. Shipping Commissioner	2
Appeal:	
Certificate of Clerk of Apostles on.....	14
Motion for Order of Transmittal of Original	
Exhibits on	12
Notice of General Appeal, Order Allowing....	9
Order for Transmittal of Original Exhibits on.	13
Statement of Points Relied Upon on (USCA)	77
Assignment of Errors	10
Certificate of Clerk of Apostles on Appeal.....	14
Court's Decision	3
Designation of Record (USCA).....	77
Motion for Order of Transmittal of Original Ex-	
hibits on Appeal	12
Notice of General Appeal	9
Names and Addresses of Proctors.....	1
Order Allowing Appeal	9
Order for Payment of Wages.....	7
Order for Transmittal of Original Exhibits on	
Appeal	13
Praecipec	14
Statement of Points Relied Upon (USCA).....	77

ii.

	PAGE
Supersedaes and Cost Bond on Appeal.....	10
Transcript of Proceedings	16
Exhibits for Petitioner:	
1—Letter, signed P. I. Dahl, M.D., to Cap- tain, S.S. Clove Hitch	35
2—Letter, dated May 14, 1948, signed R. E. Seth, M.D.	36
3—Statement, dated March 19, 1948, signed R. E. Seth, M.D.....	37
4—Bill for Professional Services.....	37
Exhibit for Respondent:	
A-1—Letter, dated March 10, 1948, to Alaska Transportation Co., signed Chris L. Ross	49
Witnesses for Petitioner:	
Cotterill, R. H.	
—direct	18
—cross	22
Humes, John E.	
—direct	25
—direct (recalled)	32
Witnesses for Respondent:	
Davis, George B.	
—direct	43
—cross	66
—redirect	69
Court's Decision	72

NAMES AND ADDRESSES OF PROCTORS

J. DUANE VANCE of

Messrs. Bassett & Geisness,
811 New World Life Building,
Seattle 4, Washington,

Proctors for Appellant.

PENDLETON MILLER and
ALBERT E. STEPHAN of

Messrs. Grosscup, Ambler & Stephan,
711 Central Building,
Seattle 4, Washington,

Proctors for Appellee. [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

ACCOUNT OF WAGES AND EXPENSES OF RESEARCHING DESERTING SEAMEN

Name of Vessel	MS CLOVE HITCH	Official No.	246847	Port of Registry	Los Angeles, California	Master	Chris Rosa
Description of Vessel or Engagement	Intercoastal						

1. Includes all earnings, whether bonus, overtime, etc. Where no balance due, insert words "no balance due."
2. Taken from official log or payroll. Includes slops, advances, fines and other proper charges.
3. See detail below for list of effects and proceeds from each item sold, if any.

Endorsed:
FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION
JUN 11 1948
MILLARD P. THOMAS, Clerk
By J. Koerner Deputy

Port Seattle, Washington Agent's Signature Eno O. Swordmaker Date 24 May 1948

Post Seattle, Washington. Shipping Commissioner C. W. Hendrickson Date 14 May, 1948

WESTERN DISTRICT Port Seattle, Washington Date 14 May, 1948

Shipping Commissioner Leroy E. KuhnsShipping Commissioner Leroy E. Kuhns

Clerk of the Court Millard P. Thomas J. W. Koerner, Deputy.

In the District Court of the United States for
the Western District of Washington,
Northern Division

No. 48-12(1)

In the Matter of the Application of JOHN E.
HUMES, Alleged Deserting Seaman, for With-
drawal of Wages.

No. 48-12(2)

In the Matter of the Application of PHILIP J.
McKANNA, Alleged Deserting Seaman, for
Withdrawal of Wages.

Before The Honorable John C. Bowen, District
Judge.

Seattle, Washington
May 15, 1948, 10:00 a.m.

COURT'S DECISION

The Court: I do not think either of these petitioners, Mr. Humes or Mr. McKanna, had sustained the burden of their allegations in their petitions. On the other hand, I believe the ship owner or operator has sustained any burden cast upon it respecting the issues framed as to whether or not these men left this ship justifiably or unjustifiably, and further as to whether or not they were specifically guilty of desertion of the ship.

So far as I know, or has here been shown, Articles calling for service by the crew for this voyage remaining uncompleted at Skagway were then still binding upon both parties to the Articles,—the

members of the crew on the one hand and the operators or owners of the ship on the other. Both parties are bound according to the terms stated in the contract. Neither is entitled to terminate [3] the contract without just cause. That applies to both sides. These two men, in my opinion, got scared by health conditions up there and I think they were not justified in getting scared. I think after they got these colds each of these two men decided that he didn't want to pursue the remainder of this voyage and he was willing to suffer the consequences of wrongful termination by him of his part of the contract in order for him to escape the performance by him of the remainder of his contract for that part of this voyage from Skagway to Texas ports. These men did not turn out to have any serious health conditions that could not have been properly treated and dealt with if they had remained on board the Clove Hitch, where they were supposed to serve pursuant to their articles. The Court does not believe that the ship was not provided with sufficient medicine kit to take care of any ordinary colds conditions.

The conduct of these two petitioners, Mr. Humes and Mr. McKanna, during the next two to five days after they left the Clove Hitch at Skagway, does not justify the contention of either one of them that the facilities on board the Clove Hitch for treating their colds were inadequate. Mr. Humes took an airplane to Seattle. He did not call upon a doctor immediately upon coming to Seattle nor go to a hospital in Seattle. He went home and went to bed,

and stayed there from Thursday until Monday, and then he went to see a doctor. He could have done the same thing aboard the Clove Hitch. He could have stayed in his bunk or he could have gone to sick bay. There isn't any question in my mind on the proof here that there was an adequate ship's bay provided on the vessel.

So far as the Petitioner McKanna is concerned, he went on board the Princess Nora as a passenger and he went [4] to his room where he stayed for about three days while the vessel was proceeding to its destination in Vancouver, B. C., and that he got some medicine from the stewardess during that voyage. He did not do anything more in the treatment of his cold for virus X or whatever it was he had than he could have conveniently done if he had stayed on board the Clove Hitch. However, I will say this, in mitigation of their attitude and their conduct, that probably each one of them did get scared about this virus X although their attitude was not justified in fact. In view of that mitigation, it is the finding, conclusion and decision of the Court that although both of these men were as logged deserters when they left their ship the Clove Hitch and repudiated their articles to serve on that ship for the remainder of the voyage she was then on, they should not be required to forfeit all of their unpaid wages but only a part of their wages. And the Court decides that each shall as a penalty for such desertion forfeit \$200 of his unpaid wages and that the balance, after deducting from the unpaid amount that \$200 forfeit shall be paid to each of these men from the amount of wages now in the

registry of this Court. Stated another way, each shall forfeit \$200 of the unpaid wages which are on deposit for his account in the registry of this Court. In the case of Humes, after such deduction the remainder of \$153.86 shall be paid to him. As to the Petitioner McKanna, after such deduction, \$183.81 shall be paid to him.

Is there anything not covered as to these two cases?

Mr. Egger: The Clerk has some statutory fees which amount to 75 cents or \$1.00 each. Do I understand that the money shall be returned less those statutory fees?

The Court: Do you advise that the Court has no [5] authority in law to order that those clerk's fees be not deducted from the remainder in each case?

Mr. Egger: No, I do not advise that.

The Court: It is the Court's preference not to provide that the Clerk shall have any of these fees on this occasion; and that unless you later advise that the law prohibits the Court from so ordering, the order of the Court will be that no fees be paid to or collected by the Clerk on account of this proceeding as to each of these petitioners.

Concluded.

[Endorsed]: Filed May 26, 1948. [6]

In the District Court of the United States for
the Western District of Washington,
Northern Division

No. 48-12(1)

In the Matter of the Application of JOHN E.
HUMES, Alleged Deserting Seaman, for With-
drawal of Wages.

ORDER FOR PAYMENT OF WAGES

This matter having come on before the Court for hearing on the application of John E. Humes, alleged deserting seaman, for the return of wages in the sum of \$353.86 heretofore deposited in the registry of this Court by the United States Shipping Commissioner, and the Court having heard the evidence presented by the petitioner and the steamship company and the Deputy United States Shipping Commissioner and being in all things advised and having found that the petitioner did desert his ship as charged but that there were mitigating circumstances and that the petitioner should forfeit \$200.00 of the money on deposit which is to be paid into the Treasury of the United States for the relief of sick and disabled seamen belonging to the United States Merchant Marine Service and the Court having found that the balance of the money on deposit should be returned to the petitioner, now, therefore,

It Is Hereby Ordered that the clerk of this Court draw checks upon the registry as follows:

To John E. Humes.....	\$153.86
To Clerk, U. S. District Court, forfeiture...	200.00
<hr/>	
Total.....	\$353.86

It Is Further Ordered that the sum of \$200.00 which has been forfeited be transmitted in the usual manner to the Treasurer of the United States in accordance with the provisions of Sections 628, 701, 706, Title 46, U.S.C., for the [7] benefit of sick and disabled and destitute seamen belonging to the United States Merchant Marine Service, to all of which petitioner excepts and his exceptions are allowed.

Dated at Seattle, Washington, this 17th day of May, 1948.

JOHN C. BOWEN,
United States District Judge.

Presented by:

J. DUANE VANCE,
Of Counsel for Petitioner.

(Duly Verified.)

[Endorsed]: Filed May 15, 1948. [8]

[Title of District Court and Cause.]

NOTICE OF GENERAL APPEAL

Sirs:

Please take notice that John E. Humes, the petitioner in the above entitled cause, hereby appeals to the next United States Circuit Court of Appeals for the Ninth Circuit from the final decree of this court entered herein the 17th day of May, 1948, and from each and every part of said decree.

Dated this 11th day of August, 1948.

BASSETT & GEISNESS,
Proctors for Petitioner.

To Grosseup, Ambler & Stephan

ORDER ALLOWING APPEAL

It Is Ordered that the appeal herein be allowed as prayed for and that the bond on appeal be fixed in the sum of \$250.00 and run to all appellees, said bond to act as a supersedeas bond and also as a bond for costs and damages on appeal.

Done In Open Court this 11th day of August, 1948.

JOHN C. BOWEN,
U. S. District Judge.

Received Aug. 11, 1948. Grosseup, Ambler & Stephan.

[Endorsed]: Filed Aug. 11, 1948. [9]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

The petitioner John E. Humes hereby assigns error in the proceedings, decrees, orders and decisions of the District Court in the above entitled action as follows:

First, the District Court erred in holding that the petitioner was guilty of desertion;

Second, the District Court erred in holding that the petitioner left his ship without justification;

Third, the District Court erred in assessing an excessive penalty under the circumstances.

Dated at Seattle, Washington, this 11th day of August, 1948.

BASSETT & GEISNESS,

Proctors for Petitioner.

Received Aug. 11, 1948. Grosscup, Ambler & Stephan.

[Endorsed]: Filed Aug. 11, 1948. [10]

General Casualty Company of America

Seattle, Washington

[Title of District Court and Cause.]

SUPERSEDEAS AND COST BOND ON APPEAL

Know All Men By These Presents, That we, John E. Humes, as Principal, and the General Casualty Company of America, a corporation organized and

existing under the laws of the State of Washington, having its principal office at Seatttle, Washington, and authorized to do business in the State of Washington, as surety, are held and firmly bound unto the United States of America and the Alaska Transportation Company in the sum of \$250.00 to be paid to the said United States of America or the Alaska Transportation Company, or the assigns of either of them, for the payment of which well and truly to be made we bind ourselves, and each of us, and each of our heirs, executors and administrators, jointly, and severally, firmly by these presents.

Sealed with our seals and dated this 13th day of August, 1948, and

Whereas, John E. Humes, as Petitioner, has appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a decree of the District Court of the United States for the Western District of Washington, Northern Division, bearing the date of the 17th day of May, 1948, in a suit in which the said John E. Humes is the Petitioner, for the withdrawal of wages, which decree orders the said John E. Humes to forfeit to the Clerk of the United States [11] District Court the sum of \$200.00 of the wages theretofore paid into said District Court; and

Whereas, the said John E. Humes desires during the progress of such appeal to stay the execution of said decree of the District Court:

Now, Therefore, the condition of this obligation is such that if the above named appellant, John E. Humes, shall prosecute said appeal with effect and

pay all costs which may be awarded against him as such appellant if the appeal is not sustained and shall abide by and perform whatever decree may be rendered by the United States Circuit Court of Appeals for the Ninth Circuit in this cause or on the mandate of said Court by the court below, then this obligation to be void. Otherwise the same shall be and remain in full force and effect.

JOHN E. HUMES,
BASSETT & GEISNESS.

By /s/ J. DUANE VANCE,
Proctors for Appellant.

(Seal) GENERAL CASUALTY COM-
PANY OF AMERICA,

By /s/ ALBERT McCARTHY,
Attorney-in-Fact.

(Duly Verified.)

[Endorsed]: Filed Aug. 18, 1948. [12]

[Title of District Court and Cause.]

MOTION FOR ORDER OF TRANSMITTAL OF
ORIGINAL EXHIBITS ON APPEAL

Comes now the Petitioner herein, John E. Humes, and moves the Court for an order directing the Clerk of the Court to transmit to the United States

Circuit Court of Appeals for the Ninth Circuit all original exhibits in this cause for use on the appeal now pending therein.

BASSETT & GEISNESS,

By J. DUANE VANCE,
Proctors for Appellant.

ORDER FOR TRANSMITTAL OF ORIGINAL
EXHIBITS ON APPEAL

This matter having come regularly before the Court on the above motion, It Is Hereby Ordered:

That the Clerk of the District Court herein shall forward to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit all original exhibits in the above entitled cause for use on the appeal herein.

Done In Open Court this 18th day of August, 1948.

JOHN C. BOWEN,
U. S. District Judge.

Presented by:

J. DUANE VANCE,
of Proctors for Appellant.

(Duly Verified.)

[Endorsed]: Filed Aug. 18, 1948. [13]

[Title of District Court and Cause.]

PRAECIPE

To Millard P. Thomas, Clerk of the United States
District Court for the Western District of
Washington:

We hereby request that the record on appeal in
the above entitled case shall include the following:

1. Account of Wages.
2. Testimony of all witnesses.
3. All exhibits.
4. Order for payment of wages 48-12(1).
5. Court's oral opinion.

BASSETT & GEISNESS,
Proctors for Petitioner.

Received Aug. 11, 1948. Grosseup, Ambler &
Stephan.

[Endorsed]: Filed Aug. 11, 1948. [14]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK OF APOSTLES ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States
District Court for the Western District of Wash-
ington, do hereby certify that the foregoing type-
written transcript of record, consisting of pages
numbered 1 to 14, inclusive, is a full, true and com-

plete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as is required by Praeceptum of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court at Seattle and that the same together with the Reporter's Transcript of Testimony, the original of which is sent up as part of this record, constitute the apostles on appeal from the order of payment of wages of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit, dated May 17, 1948.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office for preparing record on appeal herein, to wit: [15]

3 Pages at 10c.....	\$.30
10 Pages at 40c.....	4.00
Notice of Appeal.....	5.00
<hr/>	
Total.....	\$9.30

I further certify that the above amount has been paid to me by the proctor for the Appellant.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, in said District, this 10th day of September, 1948.

(Seal)

MILLARD P. THOMAS,
Clerk. [16]

In the District Court of the United States for
the Western District of Washington,
Northern Division

In Admiralty—No. 48-12(1)

In the Matter of the Application of JOHN E.
HUMES, Alleged Deserting Seaman, for With-
drawal of Wages.

Before: The Honorable John C. Bowen,
District Judge.

Seattle, Washington

May 14, 1948, 4:00 o'clock p.m.

Appearances: John Geisness, Esq., and J. Duane Vance, Esq. (Messrs. Bassett & Geisness), Proctors for Petitioner. Pendleton Miller, Esq. (Messrs. Grosscup, Ambler & Stephan), Proctors for the Steamship Company. Truman Egger, Esq., Chief Deputy Clerk, United States District Court. [1*]

PROCEEDINGS

(Counsel for the steamship company, Pendleton Miller, not present during the following proceedings.)

The Court: Will you state the reason for proceeding in these matters this afternoon instead of tomorrow morning, if there is any reason?

Mr. Egger: John E. Humes and Philip J. McKanna, the two seamen, are in court with their attorney, Mr. J. Duane Vance.

* Page numbering appearing at foot of page of original certified Reporter's Transcript.

The Court: Why are they here today?

Mr. Egger: They ask the court to consider their petition for the return of moneys paid into court by the Shipping Commissioner on the charge of desertion.

Mr. Vance: I was called by these gentlemen today. They had previously talked to us some time before, if Your Honor please. Hearings were held yesterday before the Deputy Commissioner and they were ordered to report again today for full hearings before the Commissioner at noon. The Commissioner at that time advised that he would refer the matter to Your Honor.

The vessel on which this incident occurred, and the witnesses for the Steamship Company being on that vessel, that vessel is sailing at 5:00 o'clock [2] this afternoon. If the hearing were not held at this time, if the Court please, the Steamship Company might say it was denied the right of representation.

The Court: You may proceed with that hearing as to those persons situated and affected by that ship movement.

Is the Shipping Commissioner here?

Mr. Egger: He is here, Your Honor.

The Court: Have him come forward and be sworn.

Mr. Egger, will you ask the witness what you think is within the witness' knowledge that you believe to be material here?

Mr. Egger: Yes, Your Honor.

R. H. COTTERILL

called as a witness, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Egger:

Q. What is your name?

A. R. H. Cotterill, Deputy Shipping Commissioner.

Q. Do you have in your possession the full log books of the Shipping Commissioner? [3]

A. I do.

Q. Would you read to the court that portion of the log book entries which refer to the charge of desertion on the vessel on which these men were working?

A. The first is dated "March 10th, 1948, Port of Skagway, Alaska, 1:00 p.m. February 19th, 1948 as A.B. for a voyage from the Port of Seattle, Washington, to a United States port or ports in the Gulf of Mexico, via Alaska and other United States ports and such other ports and places in any part of the United States, Atlantic and/or Gulf Coast and/or Alaska as the Master may direct and back to a Pacific Coast port of discharge in the United States at the discretion of the Master for a term not exceeding the calendar months.

"10:00 a.m., March 9th, 1948 at the Port of Skagway, Alaska, John E. Humes demanded to be paid off in full at that port. This demand was refused as there were no suitable replacements available.

(Testimony of R. H. Cotterill.)

And at about noon of that day John E. Humes took his personal belongings ashore and he did not return to the vessel. He is hereby declared a deserter with penalties as the applicable laws permit." This is signed by Chris L. Ross, Master, and witnessed by R. L. Way, Chief Mate. [4]

There is an attachment to the next page which is referred to on the preceding page. It purports to be a copy of a letter. It says, "Original letter retained in company's voyage file. Dated 3-9-48. Captain Ross, SS Clovehitch, regarding one John Humes, Able Seaman and Lookout.

"He visited my office March 8th, 1948, complaining of cold in head and aches over body. On examination he was found to have no temperature but as we have had an epidemic of virus flu I suggested that he go to bed and stay there until such time as his temperature was normal. He informed me he could not do so as there was no Sick Bay and would not go to the local hospital. He asked me to write a note so he could catch a boat on the way south. Evidently he misrepresented the facts in the case and I now realize I was 'taken in' and should not have given this note. There was a decided alcoholic odor to his breath when he consulted me."

That is all in the log book on this matter that pertains to Mr. Humes. This is the entry on Mr. McKanna—* * *.

Those are the only entries in the official log pertaining to this matter.

(Testimony of R. H. Cotterill.)

The Court: There has been something handed to [5] me, filed in this court as a part of these proceedings on May 14th. I believe it purports to be an excerpt from the log.

Mr. Egger: It is the account of the United States Shipping Commissioner, showing the minutes turned over by him to our office which are now held in the Registry of the Court.

The Court: Let Mr. Vance see that.

Does that correctly reflect the moneys in question?

Mr. Vance: We agree, may the Court please, that it is at least approximately correct.

The Court: Let that be received as a part of the files and records in this case.

The Witness: These are copies of the account, and the two information sheets on which I took down the information at the time on this ship and attached it to the account.

The Court: Has it been customary in other cases to file it in the case?

The Witness: It is brought up for the Judge to examine and to use in the case. It is an information sheet. There are two of them.

The Court: Is there any reason why the information sheet should not be received in the files and [6] records of this case?

The Witness: Well, it may be used in the case but it is part of the files of the Shipping Commissioner's office.

Customarily, when this is used, it is always re-

(Testimony of R. H. Cotterill.)

turned to the Commissioner's office, back to the Commissioner's office.

The Court: You didn't make an extra copy of it?

The Witness: That hasn't been the custom, Your Honor. It is brought up for us and then, when the case is decided, returned.

The Court: Is there anything else which you wish to call attention to?

The Witness: Well, regarding this matter I would like to explain—I went down to the ship to pay it off, and normally when there is a desertion on board we simply take up the account and we take down on this information sheet for the Court's reference matters that we can find out. But in those cases ordinarily the seamen are not present. But in this case yesterday both of these men were present and they both protested the manner in which they were logged as deserters. There was a great deal of charges and counter-charges back and forth to the extent that I decided it was advisable to postpone [7] the receiving of this account and I requested all of the parties to come up to the Shipping Commissioner's office the next day and I would refer this matter to the Chief Deputy.

I wrote up these information sheets with everything I could remember and take down in notes of these various accusations that were made on both sides, and turned them over to the Chief Deputy this morning. The Chief Deputy examined

(Testimony of R. H. Cotterill.)

all of this information and he decided it was a matter for the court, and he called for the seaman's account—pardon me, I have a bad cold—and the account was brought up, and it was forwarded and turned over to the Court in the usual manner for the disposition of the Court.

The Court: What is it that was turned over to the Court in the usual manner?

The Witness: The money, the account, and the records are available for the Court's use in this case. They are quite lengthy, here, the statements made by both parties. [8]

Cross Examination

By Mr. Vance:

Q. Did you not set the time for this hearing at noon today?

A. That was what I told all of these gentlemen, Captain Ross and Mr. Swordmaker.

Q. Were there any representatives of the company present at noon today?

A. Not at noon. Mr. Swordmaker brought in the account when he was requested to do so and turned over the account. I wasn't in a position to notice who all came and went. I do know that Mr. Swordmaker came in and turned in the account because I typed it up and was there at the time. I don't believe anyone else was in but I wouldn't say that for a fact.

Q. Mr. Cotterill, were any documents turned over to you by these seamen—original documents?

(Testimony of R. H. Cotterill.)

A. They were shown to me by Mr. Humes a number of papers which I noted on my information report for the Court's use.

Q. Was an original letter from the doctor at Skagway turned over to you by Mr. Humes?

A. I copied it and gave it back to him. I have the text [9] of it here.

Q. You copied that letter?

A. I copied it for this information sheet.

Q. You do not have the original?

A. No, I don't have the original.

Mr. Vance: I have no further questions.

The Court: You may step down.

(Witness excused.)

The Court: Is there anybody here on behalf of the shipowner? Did anybody tell the shipowner that there was going to be any evidence taken in this case this afternoon?

Mr. Egger: I have not, Your Honor. I am following the procedure had in similar hearings.

The Court: In other hearings there have been representatives of the shipowners to tell their side of the story.

Mr. Egger: I didn't do that.

The Court: Did you do that?

The Witness: No, I did not, Your Honor.

The Court: This Court doesn't proceed in star chamber but in open court and both sides have a

chance to produce testimony. Of course, if one side [10] or both sides does or do not take advantage of that opportunity, the court may eventually have to decide the case without the testimony.

Mr. Vance: If the Court please, I wondered about that point. I was only called at 1:00 o'clock and told that this hearing was scheduled.

The Court: I am satisfied the only reason you were told that was to try to accommodate your clients.

Mr. Vance: I believe that is true, Your Honor. I assume the fact that the employer failed to show at the hearing set by the Deputy Commissioner, I assumed this was a continuation of that hearing.

The Court: The only reason the Court is interrupting this trial to hear this matter is because of the allegations, the statements that have been made that these men may lose some evidence which they are entitled to have. By these men I mean your clients, these seamen. Tomorrow morning was set for the hearing of these matters. If I cannot hear the evidence on both sides there will be no decision today. I can tell you that now.

Mr. Vance: Does Your Honor care to hear the evidence?

The Court: I wish to hear all of the evidence that is available now and I will see what the situation [11] is.

Mr. Vance: Mr. Humes.

JOHN E. HUMES,

called as a witness by and on behalf of Petitioner, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Vance:

Q. Will you state your name?

A. John E. Humes.

Q. You signed aboard this vessel on February 19th, 1948 for a trip to Alaska and thence to the Gulf port, did you? A. Yes.

Q. How long was the vessel in Skagway, Alaska?

A. I was on it for two weeks in Skagway, there.

Q. What was the vessel doing there?

A. Loading cargo.

Q. During the time that you were there, did you have any difficulty? A. Yes. I was sick.

Q. What do you mean you were sick? [12]

A. Well, it was cold there and I was driving winches all day long. The wind was blowing right down the dock there and I got the flu or something.

Q. Did you talk to anybody aboard the vessel about that? A. Yes.

Q. Who did you talk to?

A. I talked to the purser. I asked for a hospital slip, and he said, "You don't need one."

Q. How many times did you ask him for a hospital slip?

(Testimony of John E. Humes.)

A. Twice—on two different days.

Q. Did you ask the Captain about it?

A. Yes. And he said, "The purser takes care of that."

Q. Then what did you do about that?

A. Well, I went to see the doctor.

Q. What doctor did you go to see?

A. I think his name is Dahl—the Skagway railroad doctor there.

Q. What did he do for you?

A. Well, he gave me some sulpha pills and told me that I should take it easy and rest. I asked him about going back to Seattle and he said, "Yes it would be a good idea."

Q. Did he give you a letter at that time?

A. He did.

Q. Do you have that letter? [13]

A. I haven't it right here. I have it on the ship that I am on right now.

Q. What did he say in that letter?

A. He said that I needed a lot of rest and it would be advisable to go back to Seattle.

Q. Incidentally, Mr. Humes, was anybody else ill along about that time?

A. Yes, there were several of the crew members.

Q. Anybody else?

A. Mr. McKanna was.

Q. Was anybody besides the crew members ill?

A. Oh, yes; 75 per cent of the town was.

Q. With what?

(Testimony of John E. Humes.)

A. Well, Dr. Dahl said it was virus flu and I guess that is what it was.

Q. So what did you do about that?

A. Well, I came back to the ship and told the Captain I wanted to go to the hospital. He says, "You can't." I said, "Well, I want to go back to Seattle," and he told me I couldn't do that either.

Q. So what did you do?

A. So I packed enough of my clothes to take me back to Seattle, and I came back to Seattle.

The Court: How did you come?

The Witness: I flew down. [14]

The Court: You had money enough to fly back?

The Witness: Yes.

Q. (By Mr. Vance): Did you demand any pay from the Captain?

A. Yes. I asked him for transportation money down.

Q. What did he say to that?

A. He says, no, he wouldn't give it to me.

Q. Mr. Humes, when you signed on the vessel—what was the name of that vessel?

A. Clovehitch.

Q. Where was it bound for?

A. Alaska and Texas, somewhere—they didn't know for sure.

Q. Do you know where the vessel was bound for from the Port of Skagway?

A. Not definitely. We knew it was Texas.

Q. Going to Texas? A. Yes.

The Court: How did you get along with your

(Testimony of John E. Humes.)

health on the way down; did you suffer any chills on the way down? The Witness: I did, yes.

The Court: How long were you confined to your home after you got to Seattle? [15]

The Witness: Two weeks.

Q. (By Mr. Vance): Did you receive any medical attention after you arrived in Seattle?

A. Yes.

Q. From whom?

A. Dr. Seth. I had oxygen treatments from him.

Q. Dr. Seth? A. Yes.

Q. Where are his offices?

A. In the Fourth and Pike Building.

The Court: What kind of doctor is he?

The Witness: He is a practicing doctor.

The Court: A physician?

The Witness: Yes, physician and surgeon.

The Court: Medical doctor?

The Witness: Yes.

Mr. Vance: I think that is all, Your Honor.

The Court: Does anyone else wish to ask this witness any questions?

Mr. Vance: There is one question I forgot to ask Mr. Humes.

Q. (By Mr. Vance): What vessel are you on now? A. The Rain Splice. [16]

Q. Are you loading? A. Yes.

Q. Are you going to leave out? A. Yes.

The Court: When?

The Witness: The 20th, Thursday.

(Witness excused.)

(Whereupon, the testimony of Philip J. McKanna was taken in evidence.) * * * *

(Short recess.)

Mr. Vance: If Your Honor please, I am sorry this incident occurred.

These men could have testified tomorrow but they felt that the Captain of the ship might have wanted to testify today.

The Court: It seems that it was not proper to have this hearing today piecemeal in this way without an opportunity being given to the people representing the ship to come in.

Unless you find out from some other source than that given here, I don't think the Court will [17] be able to decide for these men. I don't think the mere fact that we have an airplane service or rival steamship lines between here and Alaska, that members of the crew have a right to abandon a vessel just because they get a cold in Alaska.

In past years and in past generations few ships would run if men could have left the ship upon getting a cold—just because they had a cold. The ship is supposed to have some medicines.

Mr. Vance: The testimony before Your Honor is that they were refused treatment aboard the vessel.

The Court: That is not the only testimony. There is log book entry testimony here which indicates that these men without just cause left the ship.

I will be glad to hear any further testimony on the subject but that is the way it is reacting in the Court's mind upon the evidence which is before the Court now.

Men either ought to be seamen and stay with the ship in accordance with the contract which they make for a voyage or else they shouldn't go on the ship on such a contract.

I don't think these men showed a disposition to cooperate and carry out their contract like they should from the evidence now before the Court.

As I say, I will be glad to hear any further testimony that may be offered.

Mr. Vance: Will the Court continue the hearing until we can get some medical testimony on it?

The Court: I will continue this hearing until 10:00 o'clock tomorrow morning. I wish the steamship owner to be notified. I wish the operating department of that concern notified and advised that the Court will hear further testimony in this case tomorrow morning or, if there is some testimony available between 5:00 o'clock this afternoon and tomorrow, I will consider an application here, although it would be inconvenient for the Court to proceed further in this case this afternoon. But rather than lose any of the testimony on either side, I would consider that situation.

(At 4:20 o'clock, p.m., Friday, May 14, 1948, proceedings adjourned until 10:00 o'clock, a.m., Saturday, May 15th, 1948, in the United States District Court.) [19]

Seattle, Washington

May 15, 1948, 10:00 o'clock, a.m.

(All parties present as before with the addition of counsel for the Steamship Company, Mr. Pendleton Miller.)

The Court: I will proceed with the unfinished cases.

Those two cases are John E. Humes and Philip J. McKanna.

Mr. Vance, do you appear this morning for these petitioning seamen?

Mr. Vance: I do, Your Honor.

The Court: Is there anybody appearing for any other interest in the cases?

Mr. Miller: I am appearing at the request of the Court for the Alaska Transportation Company, so that the Company will be represented inasmuch as yesterday was more or less of an ex-parte hearing.

The Court: I wouldn't put it that way. The matters were continued until this morning with an opportunity for the operator of the vessel to present any testimony they so desired. The Court instructed that the operators of the vessel be notified to be able [20] to give testimony if they wanted to as well as the seamen.

Mr. Geisness: I am appearing with Mr. Vance on behalf of the seamen but not representing any other interests in the case.

The Court: What do you desire this morning?

Mr. Vance: We have some additional testimony to present, Your Honor.

The Court: You may produce it now.

JOHN E. HUMES,

recalled as a witness by and on behalf of the Petitioners, having been previously sworn, resumed the stand for further testimony as follows:

Direct Examination

By Mr. Vance:

Q. Mr. Humes, how long have you been going to sea? A. Sixteen years.

Q. Prior to March 9th, 1948, how long had you been serving aboard this ship, the Clovehitch?

A. Oh, thirteen and a half months, approximately—a [21] little over a year.

Q. Where had the ship gone during that year?

A. To Alaska.

Q. About how many times?

A. It must have made about fifteen trips when I was there—about that.

Q. Each time touching at an Alaska port?

A. Yes.

Q. And each time returning to Seattle?

A. Yes.

Q. During that 12 or 13 months, Mr. Humes, were you ever ashore on shore leave?

A. Yes.

Q. Were you on shore leave in Alaska?

A. No.

Q. At any time up there? A. No.

Q. When the ship was docked or loading or unloading? A. You mean was I ashore?

Q. Yes.

A. Well, just to go ashore to get a haircut or—

(Testimony of John E. Humes.)

The Court: What is the purpose of this line of inquiry, Mr. Vance?

Mr. Vance: I think I am about through with it, Your Honor. [22]

The Court: I mean what material bearing do these questions and answers have upon the issue here as to whether or not he had a right to the return of this money or is a deserter?

Mr. Vance: If Your Honor please, the evidence in the log book presented by the Deputy Commissioner was that they signed on this particular voyage February 19th, 1948 and the question, of course, before the Court is whether there was any justification or any appearance of justification for these seamen leaving the vessel.

From the evidence presented yesterday it might have appeared to the Court that these men were unwilling to serve in Alaskan waters or something of that nature.

This evidence is presented to show that these men had served aboard this particular vessel for a long period of time and had served in Alaska and, of course, would have no objection to such—

The Court: I meant those last questions and answers concerning his trips ashore.

Mr. Vance: That was just carrying out the further thought, if Your Honor please, that his going ashore in Skagway was nothing unusual; that is, that they do go ashore and had gone ashore on all of the [23] trips before.

Q. (By Mr. Vance): Mr. Humes, do you know

(Testimony of John E. Humes.)

of your own knowledge how long Mr. McKanna had served aboard the vessel?

A. The same length of time I had.

Q. Was the service of both you and Mr. McKanna continuous for that period of time?

A. No. We were off nine days time here in Seattle—nine days twice.

Q. You were off nine days twice in a period of approximately thirteen months, is that correct?

A. Yes.

Q. What was the nature of those periods—was that between voyages?

A. No. The Company laid the ship up.

Q. The Company laid the ship up for that period? A. Yes.

(Documents marked as Petitioners' Exhibits 1, 2, 3, and 4, for identification, respectively.)

Q. (By Mr. Vance): Mr. Humes, handing you what is marked as Petitioners' Exhibit 1, will you, without stating its contents, just state what it is?

A. Well, it is a letter from the doctor in Skagway. [24]

Q. Is that concerning your visit to him?

A. Yes.

Mr. Vance: I offer Petitioner's Exhibit 1.

Mr. Miller: No objection.

The Court: Admitted:

(Petitioners' Exhibit 1 received in evidence.)

(Testimony of John E. Humes.)

PETITIONER'S EXHIBIT No. 1

Phones: Res. 42, Office 53

Reg. No. 998

P. I. Dahl, M.D.

Skagway Surgeon, W. P. & Y. Ry. Alaska

Patient's Name.....

Address....., 194....

Capt. S.S. Clove Hitch: This man John Humes thinks he would feel better if he went to Seattle and caught the ship there. He has probably had this virus flu which always requires bed rest.

/s/ P. I. DAHL, M.D.

Take this Prescription to Keller Drug Co.. 3rd and Broadway.

Q. (By Mr. Vance): Without stating its contents, Mr. Humes, will you tell us what Petitioners' 2 is or purports to be?

A. It is a letter from my doctor here in Seattle.

Q. What is his name?

A. Dr. Raymond Seth.

Q. That is the doctor that you contacted when you first returned to Seattle? A. Yes.

Mr. Vance: May that be shown to opposing counsel.

(Document shown to Mr. Miller.)

I offer Petitioners' Exhibit 2.

Mr. Miller: No objection.

The Court: Admitted.

(Petitioners' Exhibit 2 received in evidence.)

(Testimony of John E. Humes.)

PETITIONER'S EXHIBIT No. 2

Raymond E. Seth, M.D.

Seattle, Washington

Mr. John E. Humes

May 14, 1948

1414 E. Denny Way

Seattle, Washington

Dear Mr. Humes:

This is to certify that Mr. John Humes was seen March 15, 1948 for a Virus X condition. At that time he presented symptoms and findings which are usually found. He was given penicillin and diathermy treatment March 15, 17 and 19, 1948.

/s/ R. E. SETH, M.D.

Q. (By Mr. Vance): Will you state in your own words what Petitioners' Exhibit 3 is?

A. This is a statement from the doctor when I was finished with this treatment and ready to go back to work.

Q. And what is Petitioners' Exhibit 4?

A. This is the bill that I paid for the treatments.

Q. A bill you paid to whom, Mr. Humes?

A. To Dr. Seth.

Q. Here in Seattle? A. Yes.

Mr. Vance: Will you show Exhibits 3 and 4 to Counsel?

(Exhibits 3 and 4 handed to Mr. Miller.)

Mr. Vance: We offer Petitioners' Exhibits 3 and 4.

Mr. Miller: No objection.

The Court: Each of them is now admitted.

(Petitioners' Exhibit 3 and 4 received in evidence.)

(Testimony of John E. Humes.)

PETITIONER'S EXHIBIT No. 3

Raymond E. Seth, M.D.
Seattle, Washington

March 19, 1948

To Whom It May Concern:

This is to certify that Mr. John E. Humes is able to resume his work.

/s/ R. E. SETH, M.D.,

RES/dn

929 Fourth & Pike Bldg.

PETITIONER'S EXHIBIT No. 4

Raymond E. Seth, M.D.
928-29 Fourth & Pike Bldg.
Seattle 1

Bills Rendered Monthly

Office: Eliot 4038

Mr. John E. Humes
1414 E. Denny
Seattle, Washington

To Professional Services: March, 1948

March 15	Office call treatment.....	\$ 5.00
March 17	Office call treatment.....	4.00
March 19	Office call treatment.....	5.00

\$14.00

Q. (By Mr. Vance): Mr. Humes, at the time you left the ship, do you know whether or not there was any more cargo to be loaded or discharged at that port in Alaska?

(Testimony of John E. Humes.)

A. Yes, there was some more to be loaded.

Q. Where? [26] A. In Skagway.

Q. Do you know how much? A. No.

Q. Was it to touch any other port?

A. Well, not that I know of.

Q. Do you know how long the vessel stayed in Skagway after you left?

A. Four or five days, I think.

Mr. Vance: You may cross-examine.

Mr. Miller: No questions.

The Court: Were you on the vessel about this season when the so-called virus X was supposed to be prevalent or known to be manifesting itself in illnesses,—did you find that in any other port where the ship may have been at such time?

The Witness: No. It never bothered me in any other port.

The Court: Had you been in any other ports before this ship called at Skagway?

The Witness: Yes.

The Court: What other Alaskan ports, if any?

The Witness: Ketchikan, Wrangell, Petersburg, Sitka, Pelican City.

The Court: On that voyage when the ship called at those cities, at the time you speak of—and have [27] in mind your last answer—what was the departure date from Seattle, do you recall?

The Witness: No, I don't.

The Court: Do you know how long it had been since the ship left Seattle, approximately?

The Witness: Oh, over three weeks.

(Testimony of John E. Humes.)

The Court: It had been gone from Seattle on this voyage over three weeks, you think?

The Witness: Yes.

The Court: Had you observed anyone else or had you heard of any other place where the vessel touched being affected, so far as the people's health was concerned, with this so-called virus X?

The Witness: No, I hadn't.

The Court: What date was it that you first went to see Dr. Dahl at Skagway, do you recall?

The Witness: Not the exact date. I know it was around, oh, the 8th or 9th of March. I think it was the 9th of March.

The Court: Do you recall the date that you left Skagway for Seattle on the conveyance you mentioned yesterday, which I believe was an airplane?

The Witness: Yes.

The Court: Do you remember the day of your departure from Skagway for Seattle on that trip?

The Witness: Yes.

The Court: What date was that?

The Witness: The tenth.

The Court: The tenth?

The Witness: I am not exactly sure but it was the day after I saw the doctor.

The Court: About the 10th of March, do you think?

The Witness: Yes.

The Court: Then when did you get to Seattle on that trip?

The Witness: The 12th.

(Testimony of John E. Humes.)

The Court: Then what did you do?

The Witness: Well, I stayed in bed at home until Monday morning and then I went to see the doctor.

The Court: Until Monday morning,—I do not have the related date of your arrival. You now switch from figures to days to indicate time. What day in the week did you arrive on that plane flight from Alaska to Seattle?

The Witness: Thursday.

The Court: And then the following Monday you did what?

The Witness: I started treatments at the [29] doctors.

The Court: In the meantime from Thursday to Monday you stayed in bed at home, is that your statement?

The Witness: I stayed right in bed at home.

The Court: You didn't have any advice or services from the doctor from Thursday until Monday?

The Witness: No, I didn't.

The Court: Were you trying to act upon such advice as you got from Dr. Dahl given you at Skagway?

The Witness: Yes.

The Court: Could you or could you not have followed that advice on board ship if you had stayed in your bunk on board ship?

The Witness: I suppose I could have.

The Court: Is there any reason why you might not have been permitted to—if you felt ill with a

(Testimony of John E. Humes.)

cold or with virus X—to have remained in your bunk or in your quarters on board the ship the same as you might have stayed in bed at home in Seattle?

The Witness: No.

The Court: Did you ever have a cold before this occasion while you were working as a seaman on ships on other voyages?

The Witness: Yes. [30]

The Court: How did they treat them?

The Witness: Toughed them out.

The Court: Were you ever permitted to stay in your quarters when you wished to treat a cold?

The Witness: No.

The Court: Did you ever ask to be relieved of your watch for the purpose of treating a cold?

The Witness: No.

The Court: How many years have you been going to sea as a merchant seaman?

The Witness: Sixteen years.

The Court: And during all of those sixteen years, before this occasion, in March that you are now speaking of, you never had occasion to stay in your quarters on account of a cold?

The Witness: No.

The Court: How did these symptoms manifest themselves in respect to this illness you had about the 9th or 10th of March, and from then on?

The Witness: Well, it was cold in Skagway.

The Court: The weather was cold?

The Witness: Yes. It was about 20 degrees.

(Testimony of John E. Humes.)

And the wind blows right down the dock there. We had to work driving winches,—had to sit and stand in the weather; ten hours one day and fifteen hours [31] two other days, every day. My nose ran continually.

The Court: Like a cold?

The Witness: Yes.

The Court: Did you have any signs or involvement of the chest with your cold?

The Witness: Yes.

The Court: How did that place of work at the winches on deck or in this wind at this port of Skagway on this occasion compare with other occasions when you were on board ship on Alaskan voyages; did you ever have to work winches in port in the wind on deck any other day?

The Witness: Oh, yes.

The Court: Do merchant seaman sometimes have to work in the wind on deck when they are engaged in active duty?

The Witness: Yes.

The Court: Does anyone else wish to ask any questions?

Q. (By Mr. Vance): Mr. Humes, did you have any other symptoms of illness?

A. Well, just this cold, virus X.

Mr. Vance: That is all, your Honor.

The Court: You may step down, Mr. Humes, [32] unless you believe there is something else you would like to say that you believe is material.

The Witness: Well, no, I haven't.

(Testimony of John E. Humes.)

The Court: You may step down then.

(Witness excused.)

The Court: May I ask of Counsel if you believe there is any witness who might at this particular time be feeling ill on account of the symptoms of a cold? The Court would be willing to accommodate him so that if he wished to go he would have an opportunity.

Mr. Vance: Mr. McKanna.

(The testimony of Philip J. McKanna was received in evidence.)

* * * *

The Court: Call the Petitioners' next witness.

Mr. Vance: That is the Petitioners' case, your Honor.

The Court: Does anyone wish to present any testimony?

Mr. Miller: Your Honor, we have one witness [33] we would like to present on behalf of the Alaska Transportation Company.

The Court: You may call that witness.

Mr. Miller: Mr. Davis.

GEORGE B. DAVIS,

called as a witness by and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Miller:

Q. Please state your name.

A. George B. Davis.

Q. Where do you reside?

(Testimony of George B. Davis.)

A. I live in Seattle, Washington.

Q. Where are you employed?

A. With the Alaska Transportation Company.

Q. In what capacity?

A. Personnel Manager.

Q. How long have you served in that capacity?

A. Five years.

Q. As personnel manager, what are your duties?

A. Well, the general handling of personnel and labor [34] agreements; that is one of the many duties in the over-all personnel picture.

Q. Are you responsible for crewing vessels?

A. I order the crews to my office.

Q. Is the Clovehitch operated by the Alaska Transportation Company? A. It is.

Q. Was she operated by that company in March, 1948? A. Yes, sir.

Q. Did you procure the crew for that vessel?

A. Well, the crew remained pretty much intact as it was at the previous voyage. There were possibly one or two changes, and those replacements were ordered through my office.

Q. Have you ever been aboard the Clovehitch?

A. Yes, sir.

Q. Are you familiar with the arrangement of her cabins? A. Yes, sir.

Q. And her other appointments?

A. Right.

Q. Are there any facilities for use as a sick-bay?

A. Yes, sir; there is one room for the hospital. It has four berths in it. And at any time that there

(Testimony of George B. Davis.)

is an isolated case, when we require men to be moved into other quarters than their own, the hospital is [35] available for their use.

Q. Where is that located?

A. On the after part of the main deck on the port side, inboard.

Q. It is used as a sickbay?

A. That is correct.

Q. That is its only use?

A. That is correct.

Q. Is there any governmental requirement that such a room be established aboard a vessel?

A. Depending on the operation of the vessel,—I am not too familiar with the regulations as to its requirements—but if a vessel goes beyond a certain limit it is required to have a hospital. If it stays within a certain limit, it is not required to have a hospital by law. But the vessel is licensed with a hospital and can go worldwide.

Q. Has the Clovehitch got such facilities?

A. That is correct.

Q. Mr. Davis, are you familiar with the existence or non-existence of public health hospitals in Alaskan towns and cities?

A. Well, not fully familiar with just where they are, or where they are not. There are several towns where public health is not available. [36]

Q. Is there a public health hospital in Skagway, Alaska? A. No, sir.

Q. What are these hospital slips that have been referred to here in the testimony of previous witnesses?

(Testimony of George B. Davis.)

A. I believe they are generally called a Master's Certificate for a sick or injured seaman.

Q. Are they addressed to the public health institutions?

A. That is the purpose. It is a form made out with blank lines filling in certain statistics as required.

Q. That is a public health form?

A. That is a public health form, yes, sir.

The Court: Is there any similar slip or certificate to cover a situation where a member of the crew is in need or makes a reasonable request for shore doctor examination and treatment, whether that doctor is connected with the United States Public Health Hospital or not?

The Witness: Your Honor, there is no other form, to my knowledge, unless maybe some other companies might have their own private form for purposes such as that, but our company does not have that form.

The Court: Do you know whether or not your company ever provides shore medical attention in these Alaska ports of call for men on the Alaska Transportation Company's vessels? [37]

The Witness: Yes, sir. We have done it in the past. Verification of that can be shown through our personnel records, our "T and I" records where we have paid doctor bills in the past.

The Court: Do you think that was ever done at Skagway?

The Witness: I couldn't definitely say it was ever done definitely at Skagway, your Honor.

(Testimony of George B. Davis.)

The Court: What is the attitude, if you know it, of your company respecting such medical treatment at Skagway in cases where there was any occasion for it?

The Witness: Where it is necessary for a man to have medical treatment, the instructions to the Master of the vessel are that he is to provide those medical services by private means or other means, whatever means are available.

The Court: What are the rules and regulations of your company's service as directed to pursers and other people on board the ship who may be required by your company to be responsible to your company for the carrying out of these arrangements?

The Witness: The Master is in complete charge of the vessel and in most cases instructions and a complete medical stock, sulfa drugs and penicillin and [38] all of those latest drugs are there. The Master is qualified along with his Mates by law, when they pass their examination, of a First Aid nature. What their examination is I am not too sure. But they have certain restrictions as to their knowledge of certain First Aid and medical attention.

The Master in our operation can direct the medicine chest to be put at the disposal of the men through any one of those sources. In this particular case I presume from what has transpired that Mr. Swordmaker is the one so designated.

In addition to Mr. Swordmaker being the purser

(Testimony of George B. Davis.)

on the vessel he is a graduate of the United States Sheepshead Bay Pharmacy. He is qualified as a pharmacist's mate and holds a position as such.

The Court: Did his position as purser have anything to do with his duties as pharmacist's mate?

The Witness: No. We do not require that unless he is designated to take care of the medicine chest to take care of any pharmacist duties.

In most cases it is generally practiced to use the medicine chest through the,—in most cases the Steward takes care of it in that respect.

The Court: Is there any arrangement for releasing men, merchant seamen, from their Articles [39] and terminating their services on a voyage, on which they are articulated because they become sick?

The Witness: There is no arrangement. That is pretty well governed by law and the Master's discretion. If in the Master's discretion the Master feels that the man is justified to leave the vessel and replacements are available, in such instances he will release the man.

The Court: Do you know of any company regulation or term in the contract or Articles which give the merchant seaman a right to terminate the voyage and his obligations under the contract, so far as his services are concerned?

The Witness: Under the law, to my knowledge, the contract is as written on the Articles and it does not give the seaman that privilege.

The Court: I mean in the Alaska service. Have

(Testimony of George B. Davis.)

you anything in the practice of that service which recognizes the right of a merchant seaman signing on an Alaska voyage to terminate his contract and complete that voyage as a merchant seaman if he gets a cold or gets sick?

The Witness: No, sir. There is nothing to my knowledge either in the law or in practice that makes that condition a recognized practice. [40]

Mr. Miller: May I have this marked?

(Document marked Respondent's Exhibit A-1 for identification.)

RESPONDENT'S EXHIBIT A-1

Clove Hitch

Voy. No. 12

Skagway, AAA

March 10 1948

Alaska Transportation Company

Pier 58

Seattle, Washn.

John Humes, A.B., deserting vessel at Skagway.

Gentlemen:—

At Skagway, Aaa on March 8, 1948 at about 6 pm John Humes, A-B, demanded to see a physician for treatment of a "cold" and the vessel's Purser told him to see Dr. P. I. Dahl at Skagway and at Midnight Humes returned to the vessel rather inebriated and informed the Purser that he (Humes) was "getting off the ship" and that he was flying to Seattle next day.

(Testimony of George B. Davis.)

He said that he had a written statement from Dr. Dahl recommending such a course but refused to show or read out the contents of the doctor's statement. Having had previous experience of a similar kind on another vessel with Humes, the purser suggested to Humes he go to bed and sleep over the whole thing.

The next morning at about 10 a.m. Humes told the Master of the vessel that he was quitting and requested to be paid off. He showed a slip from Dr. Dahl in which the doctor recommended "rest" for a cold to Humes. Humes retained this slip and his request was denied.

At about Noon of that day (March 9 1948) Humes took his personal belongings off the vessel with a statement to the Purser that he was flying south at 2pm of that day.

Humes at no time informed the Chief Mate of his intentions to leave the vessel at Skagway.

Mr. Geo. Hooker, the Local Agent, was informed of the above situation and he contacted ATCO home-office for instructions. He also saw Dr. Dahl regarding the matter and obtained a written statement from him, copy of which is attached to this letter.

Dr. Dahl also informed the Master that besides Humes two more of the vessel's men had visited the doctor's office with unsuccessful requests for a written statement which would permit them to leave the vessel at Skagway.

Humes was logged in the vessel's Official Log

(Testimony of George B. Davis.)

Book as a Deserter. Copy of the entry is attached.

Shipping Articles had been signed by Humes at Seattle, Washn. on February 19th 1948 effective that date. The Allotment Note signed by Humes in favor of his wife for \$100 originally due on March 18th 1948 should not be honored.

Very truly yours,

/s/ CHRIS L. ROSS,
Master.

Q. (By Mr. Miller): Mr. Davis, handing you what has been marked as Respondent's Exhibit A-1, would you state what that document is?

A. This is a letter from Captain Ross, Master of the Clovehitch, dated March 10, 1948, outlining the subject of John Humes deserting the vessel at Skagway.

Q. Is that an original document? A. It is.

Q. Was it, to your knowledge, taken from the files of the company? A. Yes, sir.

Q. Are you familiar with Captain Ross' signature? A. Yes; that is his signature.

Q. Is his signature, Captain Ross' signature, appended to Exhibit A-1? A. It is.

Mr. Miller: I would like to offer the exhibit marked as Respondent's Exhibit A-1.

Mr. Vance: We object to it, if your Honor please, as hearsay and self-serving. Furthermore, the report is made in the log and that has already [41] been received by the Court. We will object to this further hearsay report of the Captain.

(Testimony of George B. Davis.)

Mr. Miller: Your Honor, in the way of explanation, Captain Ross had to sail last night and was unable to be present here this morning. This is an original document taken from the company's files and is the best evidence we have to offer as to what the Captain would testify to had he been present.

The Court: Have you considered whether or not you had exhausted all of the proof which is available and which this witness might be able to give in response to proper questions touching the legal authentication of this document with respect to proving and establishing its admissibility in evidence any more than what you have already done?

Have you exhausted your resources on the question of admissibility so far as the proof is concerned?

Mr. Miller: I think I have exhausted it, your Honor.

The Court: I think it would be competent for somebody in the case to ask this witness how did this statement happen to be made; what was the reason for making it; whether it was customary to have such statements made and, if so, with reference to [42] the occurrence of the event which is the subject of the statement, when in the course of business would they be ordinarily made. I think it would be competent for some one in the case to ask such questions about this.

Q. (By Mr. Miller): Mr. Davis, do you know of your own personal knowledge of the reason why this document was prepared by the Captain and sent to the company?

(Testimony of George B. Davis.)

A. It was a matter to keep the home office informed of the various events that transpire on the voyage; this being an event which was of interest in the home office and of importance to the home office and the manning of the vessel, he saw fit to write this letter on March 10th. And our receiving stamp shows that we received it on either March 13th or March 15th,—I can't make out which it is.

Q. Is it customary for Captains of your vessels to write similar reports on incidents that happen during voyages which they feel are of importance to the company?

A. That is correct. At the end of each voyage the Master writes a voyage letter giving us the highlights of various incidents that transpired on those voyages.

Q. Do they also submit written reports—interim reports— [43] during the voyages?

A. On voyages, when they are not returning to the home port within a reasonable time, they send reports in to the home office when mail is available or at their convenience of mailing.

Mr. Miller: I think that is all I have, your Honor.

The Court: Is there any regulation or requirement of the company respecting such a report as this?

The Witness: We require the Master to make a voyage report. Sometimes in the course of a long voyage the reports come through over a period of time as and when incidents transpire. The main

(Testimony of George B. Davis.)

course of the voyage and the main voyage is left until the end of the voyage regardless of how long.

But in most instances in the Alaska trade, the voyage does not exceed over a month, that letter is written—unless something of this nature comes up that is of importance to the home office—then the Captain will either wire or report to us by mail.

The Court: Is this report or letter in response to the requirements of your company as mentioned?

The Witness: Yes. It falls within the lines of keeping the home office informed of incidents as [44] to crew situations and any other incidents of that type that we like to be informed of when they happen.

The Court: When was this response, Exhibit A-1, made or when was it filed with reference to the time of the occurrence of the events therein mentioned?

The Witness: This letter was written on March 10th. The incident according to this letter was after March 8th.

The Court: Which does this letter relate to?

The Witness: To Humes.

The Court: Does it concern the petitioner, McKanna?

The Witness: No.

At that time the petitioner, McKanna, had not left the vessel yet.

The Court: With reference to the occurrence of events relating to Mr. Humes, when was this exhibit mailed by the Master?

(Testimony of George B. Davis.)

The Witness: This letter was dated March 10th in Skagway, Alaska, and received in our office in Seattle,—our receiving stamp, I think it shows March 13th. It could be March 15th.

The Court: Was your company's Seattle office's receipt of that communication in the ordinary course of [45] the mail or other means of communication?

The Witness: This was received,—I believe it was sent Air Mail. If it was received on the 13th, it would undoubtedly have had to have been mailed Air Mail.

The Court: Is that a usual method of transmitting messages from Alaska to the Seattle office of your company?

The Witness: It has since Air Mail has come to the point where it is almost 100 per cent dependable. By vessel in ordinary mail it is possible not to receive a communication within ten days.

The Court: Was that, Respondent's Exhibit A-1, required or was it not required by any standing regulation or requirement made by your company of its ship masters?

The Witness: Yes.

The Court: Is there any other question anyone wishes to ask?

Mr. Miller: I don't think so.

The Court: Does anyone have any question to ask touching the admissibility of this Exhibit A-1?

Mr. Vance: No questions.

(Testimony of George B. Davis.)

The Court: I believe that the admissibility has been reasonably established by the proof. [46]

Mr. Vance: If the Court please, it seems to me from little I read of the letter that not only is it hearsay and a self-serving document on the part of the respondent, but in addition to that it is based upon further hearsay. It is hearsay built upon hearsay. It contains reports of other persons, the purser and so forth.

Furthermore, the rendering of this report was discretionary with the Captain—whether he should write then or some time later or make some other kind of report as far as the company's own regulations are concerned.

I do not think it is such a thing as an entry made in the usual and ordinary course of business, such as a minute entry or a financial transaction or some statement such as that.

This is completely hearsay, self-serving, and a narrative of an incident which is the very issue of the litigation here. Not only is it **self-serving hearsay** on the part of the Captain but it contains other self-serving and hearsay evidence of other persons aboard the vessel and other persons concerned, which evidence we have no opportunity whatsoever to rebut or cross-examine.

The Court: Is it possible for a ship's master [47] to in the ordinary course of business make a report on the occurrences aboard ship if he is required to, and is it possible then if he does that such report becomes a part of the ordinary files

(Testimony of George B. Davis.)

and records of the company, made in the ordinary course of business?

Mr. Vance: Yes, your Honor.

He makes it in a log and that log is before your Honor.

He is required by statute to make a complete and full report of all incidents of an unusual nature.

The Court: I guess there is no question about the log. But would the fact that this is a log keep the company from having other correspondence in the ordinary course of business at the home office or a foreign agency?

Mr. Vance: Such a mere entry, of course, in the course of business, a report that a man left the ship might be such an entry but a complete narrative, I do not believe it constitutes such an entry—a complete narrative concerning the entire transaction. If this company were attempting to prove dates or such as that by reports or entries made in the course of business, then I deem that those would be competent here to establish such matters as that. But this is a complete narrative which is not such an entry concerning [48] the whole subject matter.

Mr. Geisness: As I understand the rule as to the admissibility of documents made in the ordinary course of business, the rule is qualified by the proposition that they must have been made under circumstances that would not suggest an intention to change the facts in favor of the person who made the entry or the report.

(Testimony of George B. Davis.)

Therefore, if the report is made by a party in interest in the transaction and he has such an interest that it might color his report, as I understand the rule that report would not be admissible as an entry made in the regular course of business because a necessary basis for the application of that rule is that the person that made the entry must not have been under such circumstances in such a position that he might have his entry colored by his own interests.

The Court: Suppose the Union to which a merchant seaman belongs, and suppose further that a merchant seaman becomes a member of the crew in pursuance of the contract between the Union and the ship, and suppose that the Union requires the merchant seaman member of a Union in instances like this of the voluntary quitting of the ship by the merchant seaman [49] to make a report of the circumstances to the Union — not to the steamship operator — of the circumstances surrounding it, and that it is without reference to any litigation pending or which may hereafter be instituted but merely for the records and business information of the Union, then suppose there was a dispute later between the Union or one of its members, the man who voluntarily left the ship on the one side and steamship operator on the other; suppose that report contains some information material to the issue in court, do you feel clear that the merchant seaman or the Union would not be entitled to have the court given the benefit of that information on the theory that the information is

(Testimony of George B. Davis.)

contained in the business report made at the time in the ordinary course of business and without reference to litigation?

Mr. Geisness: If the report were made by the person who left the ship, it would appear to me that he undoubtedly would have an interest at the time he made the report in defending his position of leaving the ship. Therefore, as I understand the report would be disqualified and would be inadmissible. If some other person made the report, making it without interest, and simply as a routine report of the [50] fact in the ordinary course of business, then it would be admissible as I understand the rule. I don't mean that I have briefed it recently but I have briefed it and I understood that was a definite qualification of the rule.

The Court: Is it not the rule in law, as to admissibility of evidence, that where a business concern requires of its employees to make to it in the course of their employment any report or any record in the ordinary course of the employee's performance of company duties, and if the company does in the ordinary course of its business rely upon that report, act upon it and keep it as a part of its business records, may not that report as a thing done—not as a statement made—but as a thing done in the ordinary business of the company become admissible on any issues thereafter pertaining to the event?

Mr. Geisness: I think not entirely. I think a good illustration is the routine reports of accidents

(Testimony of George B. Davis.)

made by conductors on street cars and the engineers on railroads that there is an established custom that a report made to the City or other operator of the utility is admissible; and if the motorman made a report that the accident happened [51] due in substance to the negligence of another vehicle or due to the negligence of the injured person, I think without the slightest doubt that that report although one required in the ordinary operation of the utility and one perhaps relied upon by the utility in dealing with the case would be inadmissible on behalf of the utility if it were sued.

The Court: You take, for instance, a bank employee's reports or memorandum on a credit application or on any banking transaction, if the customer gets into a dispute with somebody else or if the bank gets into dispute with somebody else concerning the bank's conduct in reference to the account, is it not true that any memoranda made by a banking employee or official, made in the ordinary course of his business and duty and authority, respecting that account or the occurrence in question connected with the account—is that not admissible thereafter in any dispute between the parties?

Mr. Geisness: Always subject to the condition that the person who made the report or the memorandum was so situated at the time he made the memorandum that it would not be presumed that he was biased by reason of his interest and, of

(Testimony of George B. Davis.)

course, in ordinary [52] mercantile and banking transactions, the person making the report has no possible interest that could not be out-weighed and is not out-weighed by his duties and responsibilities as an employee to accurately report what happened. I know that is a fact that is taken into consideration. It depends always upon the nature of the transaction.

For example, if the banking or employer official in question had already fallen into difficulty with the customer and it was quite apparent on the face of the transaction that the employee or officer might be called upon to defend himself as against the customer and defend his course of conduct, then, after that arose he made this report that is usually made, I think that would not be admissible.

The Court: I have no doubt of that. But if it were made at the time the event occurred, by reason of some company requirement or if whatever he did was actually in the ordinary course of his business duty, then I ask you why the ordinary rule admitting a business record as a part of the record made in the ordinary course would not apply.

Mr. Geisness: That rule would apply unless we assume—I assume that the Captain would be interested in supporting the purser's conduct and condemning [53] the conduct of the man that left the ship.

The Court: If there was anything in the act done which was favorable to the particular em-

(Testimony of George B. Davis.)

ployee doing it, then that would exclude it. Is that not carrying the exception too far?

Mr. Geisness: I think it would be carrying it too far to carry it to the point that anything favorable to the employee was excluded.

I think the test is whether on the face of the whole transaction, taking into consideration the employee's status and his responsibility as an employee, whether it might be calculated or expected that his interest in the immediate transaction would color his report.

The Court: Mr. Miller, you having proposed the exhibit for admission, do you wish the court to have the benefit of any authority which you had when you decided to offer it or bring it here for that purpose?

Mr. Miller: Your Honor, I have no authority and have not briefed the point. However, it apparently is a document that was written as the result of a normal practice by the Captain. It was written the day after the occurrence—actually, the day after the man took off from the ship, I believe, and [54] prior to the time or period there was known to be any controversy. I have not briefed the matter, your Honor, and cannot cite any authorities. In my opinion, it should be admitted in the case.

The Court: This is a situation like those which frequently arise in the course of trials. The Court, without the benefit of any authority, is of the opinion that this is admissible but I am not going

(Testimony of George B. Davis.)

to take the chance of committing error on the question by admitting it.

The Court for the time being at least will reserve ruling on it and I will see if anything further happens in the course of the trial that bears upon the admissibility of this document.

I am inclined to the view that it is admissible but I recognize the great force—not only in the argument of counsel offering it but also in the argument of counsel opposing it.

It would be extremely helpful if both sides had presented the court with authority supporting their views and particularly it could be expected that the one offering it should be armed with some authority for his position. It is possible the other side, of course, wouldn't anticipate the offer of the document, not knowing of its existence. [55]

However, it will stand as a document marked for identification and I will see further if there is any further proof touching it.

Mr. Miller: Your Honor, in the way of explanation, we did not know when this hearing was taking place until very late. I did not have an opportunity even to examine the files until this morning.

The Court: You may proceed.

Q. (By Mr. Miller): Mr. Davis, it has been testified to by Mr. McKanna that the purser on board the vessel, a man by the name of Sword-maker, left the vessel at Skagway.

Would you state the reason for his leaving the vessel?

(Testimony of George B. Davis.)

A. Mr. Swordmaker was under instructions from the home office at the time the vessel was completely loaded and prior to its leaving the Port of Skagway for the next destination in the Port of Houston, Texas, he was to remain in Skagway, assist the agent with the paper work involved on this particular cargo, and after that was completed he was to return to Seattle. He left the vessel under company instructions because, in the course of the voyage from Skagway to [56] Houston and return, the services of a purser were not necessary.

Q. Do ship's officers have to acquire certain knowledge of medical practice in order to pass their licenses?

A. Licensed deck officers have to have a certain amount of knowledge. What it consists of, I am not sure. But to get their license they do, as they go up through the grade from Third Officer to Master, they are required by law to know certain parts of First Aid and such minor things as that.

Q. Is there requirement on board vessels engaged in the Alaska trade that the medical supplies and medical chest be carried aboard the vessel?

A. That is a requirement on any vessel, regardless of what trade it is.

Q. That is a requirement by the United States Coast Guard?

A. That I couldn't say, just what the government requires.

(Testimony of George B. Davis.)

Q. Is it required by some governmental regulation or law?

A. That controls the operation of vessels. It is under one of those and I presume under the Coast Guard.

The Court: I believe the material inquiry in that connection is what was the fact in reference to this vessel at the time these two men met the [57] ship.

Mr. Miller: That, your Honor, I can't ask because this witness was not there and does not know.

The Court: Somebody might properly inquire of this witness or some other one as to whether or not that medicine chest provision was a condition to certification of the vessel for the voyage.

Q. (By Mr. Miller): Mr. Davis, do you know whether or not the presence and certification of the medical chest aboard this vessel was required before any certification on this voyage?

A. I was on board the vessel upon its return Thursday afternoon. And in the Master's office there was quite a sizable cabinet full of medicines. As to what all they were or to what the volume of those medicines were, I could not say, but it looked like an ample supply of various types of medicines for a voyage of long duration. What had been used in the course of the voyage I do not know.

Q. You do not know of your own knowledge

(Testimony of George B. Davis.)

what was aboard when she left or whether any inspection was made? A. No.

Mr. Miller: That is all, your Honor. [58]

Cross Examination

By Mr. Vance:

Q. Mr. Davis, you have stated, I believe, that the Masters of your company are instructed to provide medical assistance to the seamen, when necessary, at any port?

A. That is correct. They have been advised of these and they are well aware of the various conditions that arise. And they have general instructions in regards to those matters.

Q. In other words, whether there is general public health service or not? A. Yes.

Q. Mr. Davis, you stated that the services of the purser were not to be necessary after leaving Skagway? A. That is correct.

Q. The ship was going from Skagway to Houston, Texas direct non-stop, is that correct?

A. That is correct.

Q. Would there be any pharmacist's mate aboard? A. Not required by law.

Q. As a matter of fact, in regard to this crew, was there any other pharmacist's mate aboard?

A. None licensed as such but the deck officers are qualified [59] in that respect.

Q. According to the first aid instructions they have had, that is? A. Yes.

Q. Were there any other personnel that were

(Testimony of George B. Davis.)

not necessary, after leaving Skagway, bound for Houston?

A. You are required by law to carry certain drugs. The only one who was to give them out was the purser.

Q. Were there any others whose services were not necessary by virtue of any contract or otherwise?

A. If I follow what you are referring to, it is: does the law or does the law not require you to carry winch drivers.

Q. Does the law require you to carry winch drivers to Alaska?

A. Our Union contract requires us to carry winch drivers.

Q. Would that contract have required you to carry winch drivers between Skagway and San Antonio, Texas? A. No.

Q. When you saw the ship here—that was last Thursday when it docked in Seattle.

A. I went aboard Thursday. Now, I think it got in the day before, if I recall.

Q. Anyway, it was about day before yesterday that you were aboard the ship? [60]

A. Thursday afternoon.

Q. And it had an ample supply of medicines at that time, you say, or what appeared to be an ample supply for a long trip?

A. To a layman, yes.

Q. So you assume that that situation prevailed all through Alaska, is that correct?

(Testimony of George B. Davis.)

A. To my knowledge I don't know of any purchase of medicines other than what was placed aboard the vessel prior to sailing.

Q. There would have been no reason in Alaska for not dispensing medicines freely from the medicine chest, would there? A. There would not.

Q. Were there any replacements available to be put aboard ship?

A. No, there were no replacements available in Skagway.

Q. He left the ship four or five days before the ship sailed in Skagway, did he not?

A. I believe so.

Q. He flew to Seattle that day, did he not?

A. That is correct.

Q. Were any requests made to replace Humes in Alaska?

A. We were notified of his leaving the vessel but no direct request was made to replace the man.

Q. And the ship sailed to San Antonio, Texas without these two men without replacements having been made for them?

A. That is correct. She was still manned within the law.

Q. And was she manned so that it could be operated properly?

A. In the operation and the run after leaving Skagway, she was manned sufficiently to take care of her needs, yes.

Mr. Vance: That is all.

(Testimony of George B. Davis.)

Redirect Examination

By Mr. Miller:

Q. Mr. Davis, you referred to a Union contract requirement as to winch drivers for the Clovehitch.

Explain what you meant by that reference, will you please?

A. By law the vessel is required to carry six AB's, three ordinary seaman—that have a certificate by law, I presume—I believe, on this particular type of vessel. By Union contract we carry in the Alaska trade nine AB's, two winch drivers, and a boatswain. The three changes of ratings between ordinary [62] and AB have been negotiated through the Union and have been changed in that particular grade to two AB's—that is the reason for nine instead of six. The winch drivers have been negotiated because in the Alaska operation historically sailors have discharged and loaded the cargo. At one time winch drivers were not available.

In various ports in Alaska that particular skill is not available even today. So it is necessary to carry this type of rating on the Alaska vessels if the cargo was to be loaded or discharged.

In most cases the winch drivers are able-bodied seamen. In this particular case — going into the Union contract situation—prior to the vessel's sailing I endeavored to negotiate with the Union to the extent that we were not endeavoring to reduce the manning by the winch drivers in Skagway after the function of the trip was completed.

(Testimony of George B. Davis.)

We requested the Union to put a rider onto the Articles whereby these men would retain the rating of winch driver and the pay of winch driver, but would perform certain duties which would normally be performed in daytime without the payment of overtime under the unwritten contract that the winch drivers get overtime in the Alaska trade.

This was refused by the Union and we signed on the ship with the usual ratings for the duration of the trip to Skagway, Alaska and the Gulf and return to Seattle.

Q. Mr. Davis, you stated that the crew worked cargo from Alaska points?

A. I think they worked one-half in all of the ports.

Q. Is that usual in trades intercoastal other than Alaska? A. No, sir.

Q. Do the crews secure additional pay for working cargo?

A. They get overtime at a specified rate per hour.

Q. That is in excess of their base pay as seamen? A. That is correct.

Q. After leaving Skagway, where did this vessel next touch shore?

A. Her next port of call was Houston, Texas.

Q. Did the crew work any cargo there?

A. No, sir.

Q. They would not have received any overtime for that purpose at Houston, Texas?

A. Other than ship's overtime which would fall

(Testimony of George B. Davis.)

within the Union contract. There would be no more cargo operations.

Mr. Miller: That is all. [64]

The Court: Have you any way of knowing whether the petitioners Humes and McKanna knew that when that vessel left Skagway and sailed, her next port of call would be Houston, Texas?

The Witness: I believe every member of the crew knew that the ship was sailing to Houston, Texas.

There was a doubt as to whether it would make two ports of call in Texas or not, but I think it was generally known all over the waterfront and also aboard the vessel that the ship would call at Houston and possibly report into another port in addition.

The Court: You may inquire.

Mr. Miller: No further questions.

Mr. Vance: No further questions.

The Court: You may step down.

(Witness excused.)

Mr. Miller: Your Honor, we have no further witnesses. We were unable to secure the Captain, Captain Ross, or the purser, Swordmaker, here. It will be gone approximately one month.

The Court: Very well.

(Argument presented by respective counsel for the petitioner and respondent.) [65]

Seattle, Washington
May 15, 1948, 10:00 a.m.

COURT'S DECISION

The Court: I do not think either of these petitioners, Mr. Humes or Mr. McKanna, has sustained the burden of their allegations in their petitions. On the other hand, I believe the shipowner or operator has sustained any burden cast upon it respecting the issues framed as to whether or not these men left this ship justifiably or unjustifiably, and further as to whether or not they were specifically guilty of desertion of the ship.

So far as I know, or has here been shown, Articles calling for service by the crew for this voyage remaining uncompleted at Skagway were then still binding upon both parties to the Articles—the members of the crew on the one hand and the operators or owners of the ship on the other. Both parties are bound according to the terms stated in the contract. Neither is entitled to terminate the contract without just cause. That applies to both sides. These two men, in my opinion, [66] got scared by health conditions up there and I think they were not justified in getting scared. I think after they got these colds each of these two men decided that he didn't want to pursue the remainder of this voyage and he was willing to suffer the consequences of wrongful termination by him of his part of the contract in order for him to escape the performance by him of the remainder of his contract for that part of this voyage from

Skagway to Texas ports. These men did not turn out to have any serious health conditions that could not have been properly treated and dealt with if they had remained on board the Clovehitch, where they were supposed to serve pursuant to their Articles. The Court does not believe that the ship was not provided with sufficient medicine kit to take care of any ordinary cold conditions.

The conduct of these two petitioners, Mr. Humes and Mr. McKanna, during the next two to five days after they left the Clovehitch at Skagway, does not justify the contention of either one of them that the facilities on board the Clovehitch for treating their colds were inadequate. Mr. Humes took an airplane to Seattle. He did not call upon a doctor immediately upon coming to Seattle nor go to a hospital in Seattle. He went home and went to bed, and stayed there from Thursday until [67] Monday, and then he went to see a doctor. He could have done the same thing on board the Clovehitch. He could have stayed in his bunk or he could have gone to sick bay. There isn't any question in my mind on the proof here that there was an adequate ship's bay provided on the vessel.

So far as the Petitioner McKanna is concerned, he went on board the Princess Nora as a passenger and he went to his room where he stayed for about three days while the vessel was proceeding to its destination in Vancouver, B. C., and that he got some medicine from the stewardess during that voyage. He did not do anything more in the treatment of his cold for virus X or whatever it was

he had than he could have conveniently done if he had stayed on board the Clove Hitch. However, I will say this, in mitigation of their attitude and their conduct, that probably each one of them did get scared about this virus X although their attitude was not justified in fact. In view of that mitigation, it is the finding, conclusion and decision of the Court that although both of these men were logged as deserters when they left their ship the Clovehitch and repudiated their Articles to serve on that ship for the remainder of the voyage she was then on, they should not be required to forfeit all of their unpaid wages but only a [68] part of their wages. And the Court decides that each shall as a penalty for such desertion forfeit \$200 of his unpaid wages and that the balance, after deducting from the unpaid amount that \$200 forfeit shall be paid to each of these men from the amount of wages now in the registry of this Court. Stated another way, each shall forfeit \$200 of the unpaid wages which are on desposit for his account in the registry of this Court. In the case of Humes, after such deduction, the remainder of \$153.86 shall be paid to him. As to the Petitioner McKanna, after such reduction, \$183.81 shall be paid to him.

Is there anything not covered as to these two cases?

Mr. Egger: The clerk has some statutory fees which amount to 75 cents or \$1.00 each. Do I understand that the money shall be returned less those statutory fees?

The Court: Do you advise that the Court has

no authority in law to order that those clerk's fees be not deducted from the remainder in each case?

Mr. Egger: No, I do not advise that.

The Court: It is the Court's preference not to provide that the Clerk shall have any of these fees on this occasion; and that unless you later advise that [69] the law prohibits the Court from so ordering, the order of the Court will be that no fees be paid to or collected by the Clerk on account of this proceeding as to each of these petitioners.

(Concluded) [70]

CERTIFICATE

I, Merritt G. Dyer, Official Court Reporter for the United States District Court for the Western District of Washington, Northern Division, do hereby certify that the foregoing is a full, true and correct transcript of the proceedings had as to the application of John E. Humes, alleged deserting seaman, for withdrawal of wages, Case Number 48-12 (1) In Admiralty Court.

/s/ MERRITT G. DYER,
Official Court Reporter.

[Endorsed]: Filed Sept. 3, 1948. [70-A]

[Endorsed]: No. 12038. United States Court of Appeals for the Ninth Circuit. John E. Humes, Appellant, vs. Alaska Transportation Company, a Corporation, Appellee. Apostles on Appeal. Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed September 14, 1948.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for
the Ninth Circuit.

•

In the United States Court of Appeals
for the Ninth Circuit

No. 12038

JOHN E. HUMES,

Appellant,

vs.

ALASKA TRANSPORTATION COMPANY,
Respondent.

STATEMENT OF POINTS RELIED UPON
AND DESIGNATION OF RECORD

The appellant herein hereby adopts his assignments of error heretofore filed herein as his statement of the points on which he intends to rely on this appeal.

The appellant designates the entire record as necessary for the consideration of the appeal.

/s/ BASSETT & GEISNESS.

/s/ J. DUANE VANCE,
Proctors for Appellant.

(Acknowledgment of Service.)

[Endorsed]: Filed September 22, 1948. Paul P. O'Brien, Clerk.

